**SPECIAL ISSUE**

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REPUBLIC OF KENYA

# *KENYA GAZETTE SUPPLEMENT*

## NATIONAL ASSEMBLY BILLS, 2014

**NAIROBI, 26th March, 2014**

**CONTENT**

Bill for Introduction into the National Assembly—





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# THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2014

## A Bill for

**AN ACT of Parliament to amend the Public Finance Management Act**

**ENACTED by the Parliament of Kenya, as follows—**

**1.** This Act may be cited as the Public Finance Management (Amendment) Act, 2014.

Short title.

**2.** Section 2 of the Public Finance Management Act (hereinafter referred to as "the principal Act") is amended—

Amendment of section 2 of No.18 of 2012.

(a) in the definition of the expression "national government security", by—

(i) deleting the word "includes" and substituting therefor the word "means";

(ii) inserting the expression "or section 53A" immediately after the expression "section 53".

(b) by inserting the following new definitions in their proper alphabetical sequence—

"external government security" means a national government security which is issued outside Kenya;

"external loan" means any loan governed by the laws of a jurisdiction other than Kenya; and

"loan" means any borrowing with or without interest from any source or any issuance of a national government security.

**3.** Section 50 of the principal Act is amended by deleting subsection (7) and substituting therefor the following new subsection—

Amendment of section 50 of No. 18 of 2012.

"(7) The Cabinet Secretary shall ensure that the proceeds of any loan raised under this Act are—

(a) paid into the Consolidated Fund;

(b) paid into any other public fund established by the national government or any of its entities as the Cabinet Secretary may determine in accordance with regulations approved by Parliament;

(c) disbursed directly to the suppliers where the loan is raised for the purpose of financing goods and services provided by a supplier outside Kenya; or

(d) in the case of an external loan or external government security, applied, in part, to pay at closing, expenses associated with the borrowing, including but not limited to, the fees, commissions and expenses of lenders, financial arrangers, managers and bookrunners, fiscal agents, trustees, paying agents, exchange and information agents, syndicate agents, counsel, clearing systems, listing agents, and stock exchanges, rating agencies and other expenses of a similar nature arising from the external loan or external government security."

Amendment of section 53 of No. 18 of 2012.

**4.** Section 53 of the principal Act is amended—

(a) in subsection (6), by—

(i) inserting the words "the national government or" immediately after the words "a loan by"; and

(ii) deleting the words "or prejudice to the entity that borrowed".

(b) by inserting the following new subsection immediately after subsection (16)—

"(17) The provisions of this section shall not apply to external loans or external government securities".

Insertion of a new section 53A in No.18 of 2012.

**5.** The principal Act is amended by inserting the following new section immediately after section 53—

Issuance of external securities by national government.

**53A.** (1) Notwithstanding the provisions of section 53 of this Act, the national government may issue external government securities, for money borrowed or for any other purpose, only in circumstances expressly authorised by this Act.

(2) The Cabinet Secretary may raise an external loan or issue external government securities, authorized by this Act, on behalf of the national government for money borrowed by the national government in such manner as the Cabinet Secretary may determine.

(3) Any external loans or external government securities issued by the Cabinet Secretary under this section shall be within the borrowing limits set by Parliament under section 50(2) of this Act.

(4) The authority of the Cabinet Secretary to borrow money includes the authority to borrow money by raising external loans or issuing external government securities.

(5) The Cabinet Secretary shall ensure that every external loan or external government security issued under this section is given in the name of the Republic of Kenya.

(6) An external loan or external government security may be executed on behalf of the national government only by—

(a) the Cabinet Secretary;

(b) a delegate appointed by the Cabinet Secretary, in writing; or

(c) a borrowing agent appointed for the purposes of this Act.

(7) For the purposes of subsection (6), it shall be sufficient if the signature of a person who is required to execute an external government security under this section is reproduced on the security.

(8) External government securities shall be registered and may be recorded and traded in accordance with the terms and conditions of the external government security.

(9) Claims against the borrower or issuer by holders of external loans or external government securities for payment shall be prescribed and become void if the claims are not made within six years from the redemption date in the case of principal and five years from the due date in the case of interest or any other amount.

(10) In the case of external government securities, a duplicate external government security may be issued in accordance with the terms and conditions applicable to the external government security to replace an external government security that is lost, damaged or destroyed.

Amendment of section 55 of No. 18 of 2012.

**6.** Section 55 of the principal Act is amended by inserting the following new subsection immediately after subsection (9)—

"(10) The provisions of this section shall not apply to external government securities except that notifications shall be made in the Register of the National Government Securities to reflect the outstanding amount of each issue of external debt securities".

## MEMORANDUM OF OBJECTS AND REASONS

The legislative proposal giving rise to this Bill has been submitted by the Cabinet Secretary for National Treasury. The principal object of this Bill is to amend the Public Finance Management Act (No. 18 of 2012) to provide for the receipt of proceeds of any loan raised or external government security issued under the Act and to ensure smooth implementation of the Act.

**Clause 1** sets out the short title of the proposed Act.

**Clause 2** proposes to amend section 2 of the Act to clarify the definition of "national government security" and also seeks to include new definitions.

**Clause 3** proposes to amend the section 50(7) of the Act so as to provide for the receipt of proceeds of any loan raised or external government security issued under the Act.

**Clause 4** proposes to amend section 56(6) of the Act so as to make a distinction between national government securities and external government securities.

**Clause 5** proposes to amend the Act by introducing a new section 53A to provide for issuance of external government securities.

**Clause 6** of the Bill proposes to amend section 55 of the Act so as to make it clear the role of the registrar of the securities in relation to external government securities.

This Bill is not a Bill concerning county governments.

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 21st March, 2014.

ADEN DUALE,
*Leader of the Majority Party.*

*Section 2 of No.18 of 2012, which it is proposed to amend—*

"national government security" includes a security issued by the national government under section 53 and a treasury bill, treasury bond, treasury note, government stock and any other debt instrument issued by the national government;

*Section 50(7) of No.18 of 2012, which it is proposed to amend—*

The Cabinet Secretary shall ensure that the proceeds of any loan raised under this Act are paid into the Consolidated Fund or into any other public fund established by the national government or any of its entities as Cabinet Secretary may determine in accordance with regulations approved by Parliament.

*Section 53(6) of No.18 of 2012, which it is proposed to amend—*

An agreement to obtain a loan by a national government entity may be amended from time to time and where the amendment results in further indebtedness or prejudice to the entity that borrowed, the amendment shall be approved by Parliament.